

### **REMARKS**

This Amendment and Response is in reply to the Office Action dated December 17, 2007. Applicant wishes to thank the Examiner for his careful review and consideration of this application.

Prior to filing of this Amendment and Response, claims 29-38 and 40-60 were pending in the application. Applicant herein amended claims 29, 33, 43, 44, 49, 50 and 60. Claim 59 has been cancelled without prejudice or disclaimer, and the recitations thereof have been included within independent claim 44. Claims 49 and 50 have been rewritten in independent form to include the recitations of claims 44 and 48 from which they previously depended. Claims 29-38, 40-58 and 60 remain pending in the present application. In light of the foregoing amendments and following remarks, Applicant respectfully requests withdrawal of the pending rejections and advancement of all remaining claims of this Application to allowance.

#### **Claim Rejections Under 35 U.S.C. § 112**

Claims 29-38 and 40-60 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regarded as the invention. In particular, in claims 29, paragraph "b", 43, 44, paragraphs "b", and 60 were rejected for inclusion of the phrase "such as". Claims 29, 43, 44 and 60 have been amended to delete reference to the "such as" objected to language. Claim 33 had been rejected for having no clear antecedent basis for the term "the board-like sheet of material". Claim 33 has been amended to delete the term "board-like" therefrom.

Accordingly, all the claims rejected under 35 U.S.C. § 112, namely claims 29, 33, 43, 44 and 60, and the claims dependent thereon, have been amended to clarify their respective recitations, and now are definite and particularly point and distinctly claim the subject matter which Applicant regards as the invention. Withdrawal of the rejections thereof under 35 U.S.C. § 112 are respectively requested.

It is noted that the amendments discussed in this section were not made to overcome art based rejections. Accordingly, such amendments should not be construed in a limiting manner.

**Claim Rejections Under 35 U.S.C. § 103(a)**

Claims 44-48, 51-58 and 60 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Byhre (1,865,885) in view of Gringer (4,753,471). In view of the Allowable Subject Matter (next section) and the amendments herein made to the claims, the claim rejections under 35 U.S.C. § 103(a) are moot. Applicant would, however, like to offer several comments with regard to the mortar "hawk" references of Byhre and Gringer. The mortar hawk structures as disclosed by Byhre and Gringer significantly differ in construction and use from a much larger mortarboard configuration. A mortar hawk, as known in the art, is a portable mortar or plaster carrying apparatus that is carried and supported by one arm of its user as the user carries a small amount of mortar or the like thereon while walking or moving about a building or construction site. A typical use for a mortar hawk may be for use by a person applying drywall cement over drywall tape or joints. Such mortar hawks, therefore, are generally of light weight construction, are fairly small, and carry a relatively small load of mortar, so that the user can easily handle and carry the mortar with one arm, while applying the mortar by a trowel or tool with the other. Further, because of such use, mortar hawk handles are typically oriented perpendicularly to the upper surface of the hawk, for centrally supporting the mortar carrying portion of the hawk. In contrast, a mortarboard is designed to operatively lie on a generally flat surface. Such use would not generally accommodate a handle construction that would extend downwardly from the lower central portion of the mortarboard. Further, a mortarboard has a mortar retaining surface that is significantly larger than that of the hawk and is configured to hold a charge of mortar that is significantly larger and weighs significantly more than that of a hawk. It would be virtually impossible for a user to lift and carry a loaded mortarboard by one arm for any extent of time, due to the combined operative weight and size thereof.

Applicant would also like to comment on the Examiner's characterization of reference numeral (16) of Gringer as representing "support ribs". Reference numeral (16) of Gringer refers to the mushroom pins that are used to snap fit the handle (12) to the hawk (see column 3, lines 38-43), and not to any support rib structure.

**Allowable Subject Matter**

Paragraphs 6 and 7 of the Office Action state that claims 29 and 30-43, 49-50 and 59 are objected to and would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph and to include all the limitations of any base claim and intervening claims. The claims as amended herein have been rewritten to overcome the rejections under 35 U.S.C. § 112, as described above. Further, as amended, all of the claims should now be written in an allowable form, as described below.

Independent claim 29 stood rejected only under 35 U.S.C. § 112, second paragraph. As amended, the objected to "such as" language has been deleted from claim 29. Accordingly, claim 29 should be allowable, as stated by the Examiner. Claims 30-38 and 40-43 depend from claim 29. Claims 43 and 44 have been amended to delete the objected to "such as" language therefrom. Claim 33 has been amended to delete the language "board-like" therefrom, removing the need for providing an antecedent basis therefore. Therefore, all of the claims 30-38 and 40-43 which depend from claim 29 should also now be in a proper form for allowance, for those reasons discussed above with respect to claim 29 and the 35 U.S.C. § 112 objections. Applicant respectfully requests reconsideration and allowance of claims 29-38 and 40-43.

Claim 49 was admitted to be allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, second paragraph and to include all of the limitations of its base claim and in any intervening claims. Claim 49 depended from independent claim 44 and intervening claim 48. Claim 44, paragraph "b", has been amended to remove the "such as" language for which it was rejected under 35 U.S.C. § 112, second paragraph. Claim 49 has now been rewritten in independent form to include the prior recitations (as amended to overcome the 35 U.S.C. § 112 rejection) of claims 44 and 48, and should now be in proper form for allowance. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 49 under 35 U.S.C. § 112 and allowance thereof.

Similarly, claim 50 which depended upon independent claim 44 and intervening claim 48 has been written in independent form to include the recitations thereof and to delete the objected to language that was rejected under 35 U.S.C. § 112. Accordingly, claim 50 should also now be

in proper form for allowance, and the Applicant requests withdrawal of the rejection under 35 U.S.C. § 112 thereof and allowance of claim 50.

The Examiner has indicated that claim 59 would also be allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, second paragraph and to include all the limitations of its base claim 44. Independent claim 44 has been amended to include the recitations of claim 59, and as previously discussed has been amended to delete the objected to language under 35 U.S.C. § 112, second paragraph. Claim 59 has been cancelled. Accordingly, Applicant submits that claim 44 (original claim 60) is now in proper form for allowance and respectfully requests withdrawal of the previous 35 U.S.C. § 112 rejections thereof. Claims 45-48, 51-58 and 60 which depend from claim 44, as amended, should also now be in proper form for allowance. In addition to the previously discussed amendments, claim 60 has been amended to remove the objected to "such as" language therefrom. Accordingly, Applicant submits that claims 44-48, 50-58 and 60 are in proper form for allowance, and respectfully requests withdrawal of the former rejections of such claims under 35 U.S.C. § 112.

### Conclusion

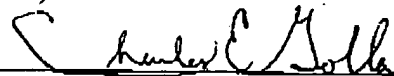
This Amendment and Response is believed to be responsive to all points raised in the Office Action. Accordingly, Applicant respectfully requests reconsideration and allowance of all of the current pending claims. Should the Examiner have any remaining questions or concerns, the Examiner is urged to contact the undersigned Attorney at 612.336.4786 to discuss the same.

Additionally, the Commissioner is hereby authorized to charge any additional fees as set forth in Section § 38 CFR 1.16 21.18 which may be required for enter of these papers or to credit any overpayment to Deposit Account No. 13-2725.

Respectfully submitted,

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